UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, *et al.*, *Plaintiffs*, v. STATE OF TEXAS, *et al.*, *Defendants*.	CIVIL ACTION NO. SA-11-CA-360-OLG-JES-XR [Lead case]
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC), *Plaintiffs,* v. STATE OF TEXAS, *et al.*, *Defendants.*	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated case]
TEXAS LATINO REDISTRICTING TASK FORCE, et al., *Plaintiffs*, v. RICK PERRY , *Defendant.*	CIVIL ACTION NO. SA-11-CV-490-OLG-JES-XR [Consolidated case]
MARAGARITA V. QUESADA, et al., *Plaintiffs*, v. RICK PERRY, *et al.,*	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated case]

Defendants.	)	
_____	)	
	)	
JOHN T. MORRIS,	)	CIVL ACTION NO.
	)	SA-11-CA-615-OLG-JES-XR
Plaintiff,	)	[Consolidated case]
	)	
v.	)	
	)	
STATE OF TEXAS, et al.,	)	
	)	
Defendants.	)	
_____	)	
	)	
EDDIE RODRIGUEZ, et al.	)	CIVIL ACTION NO.
	)	SA-11-CA-635-OLG-JES-XR
Plaintiffs,	)	[Consolidated case]
	)	
v.	)	
	)	
RICK PERRY, et al.,	)	
	)	
Defendants.	)	

POST TRIAL BRIEF OF THE NAACP AND AFRICAN AMERICAN CONGRESSPERSONS – 2011 CONGRESS AND HOUSE

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The Texas State Conference of NAACP Branches, Juanita Wallace, Rev. Bill Lawson, and Howard Jefferson (hereinafter, "NAACP Plaintiffs"), and Eddie Bernice Johnson, Alexander Green, and Sheila Jackson-Lee (hereinafter, "Congresspersons") (together, "Joint Plaintiffs") respectfully submit the following post-trial brief, detailing the legal standards and relevant facts with respect to their challenges to the 2011 Texas congressional and state house redistricting plans. The NAACP Plaintiffs and Congresspersons incorporate by reference their post-trial brief from 2011 (hereinafter, "NAACP 2011Post-Trial Brief," ECF No. 407, October 7, 2011), and further highlight for the Court the following law and facts.

INTRODUCTION

In their 3rd Amended Complaint, the NAACP Plaintiffs assert that the 2011 congressional and state house plans violate both the Fourteenth Amendment and Section 2 of the Voting Rights—thus asserting both intent and effect claims. The Congresspersons made identical challenges to the 2011 congressional redistricting plan in their 2nd Amended Complaint.

As demonstrated over more than four weeks of trial in 2011 and 2014, and as detailed below, Joint Plaintiffs have amply demonstrated the ways in which Texas violated the Voting Rights Act and the Equal Protection guarantees afforded to its citizens of color. Those violations necessitate action by this Court to remedy those egregious misdoings, and to even the playing field for minority voters. Beyond the facts and the law establishing Joint Plaintiffs' case beyond question, equity and conscience also demand judicial intervention. Without a ruling and remedy from this Court, Texas will continue to follow its well-established pattern of discrimination against historically marginalized and disenfranchised voters.

ARGUMENT

I. THE LAW GOVERNING CLAIMS OF INTENTIONAL DISCRIMINATION UNDER THE FOURTEENTH AMENDMENT AND THE VOTING RIGHTS ACT

During the 2011 and most recent 2014 trial on the 2011 redistricting plans, the NAACP Plaintiffs, the Congresspersons and other plaintiffs documented the consistent abuse of minority voting rights by Anglos in power, which is intentional discrimination in violation of the Fourteenth Amendment and Section 2 of the Voting Rights Act. In each of the three segments of the trial on the 2011 House and Congressional plans, this Court heard significant evidence demonstrating that Texas, in the 2011 redistricting process, sought to minimize minority voting power, despite the disparately mammoth population growth amongst voters of color.

Claims of intentional discrimination in violation of the Fourteenth Amendment are adjudicated under the standard announced in *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 165-66 (1977). Plaintiffs are not required to produce a "smoking gun" or to prove that racial considerations predominated over all other considerations. *Id*. Instead, in *Arlington Heights*, the Supreme Court identified the kinds of indirect evidence that establish a prima facie case of intentional discrimination, including evidence of discriminatory effect, the history and events surrounding the government's actions, any departure from usual procedures, and discriminatory statements in the legislative history. *Id.* at 266-68. To find discriminatory intent, "'direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant's actions'" may be considered. *United States v. Brown*, 328 F.3d 787, 789 (5th Cir. 2003); *McMillan v. Escambia County*, 748 F.2d 1037, 1047 (5th Cir. 1984) (quoting S. Rep. No. 97-417, at 27 n.108). While evidence of discriminatory effect is usually not sufficient to succeed on a Fourteenth Amendment intentional discrimination claim,

the Court has acknowledged that sometimes the impact of a challenged law may be so clearly discriminatory as to allow no other explanation than it was adopted for a discriminatory purpose. *Arlington Heights*, 429 U.S. at 266.

One of the leading cases on intentional discrimination in redistricting is *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 681 (1991). The Ninth Circuit affirmed a district court's finding of intentional discrimination in violation of the Fourteenth Amendment and the Voting Rights Act where the county enacted a redistricting plan that deliberately minimized minority political power. *Id*. at 769. *Garza* did not involve an at-large election system—rather, the County had drawn single-member districts in a way that undermined emerging Latino voting strength. *Id*. The district court cited as important facts that "[i]t was readily apparent in 1980 that the Hispanic population was on the rise and growing rapidly and that the white non-Hispanic population was declining," *id*. at 768, "that the Board of Supervisors, in adopting the 1981 redistricting plan, acted primarily with the objective of protecting and preserving the incumbencies of the five Supervisors or their political allies," that "[t]he continued fragmentation of the Hispanic vote was a reasonably foreseeable consequence of the 1981 plan, and "that during the 1981 redistricting process, the Supervisors knew that the protection of their five Anglo incumbencies was inextricably linked to the continued fragmentation of the Hispanic Core." *Id.* The appellate court rejected the proposition that political self-interest in away negated Fourteenth Amendment or Voting Rights Act liability.

Garza is well in conformity with Supreme Court precedent on intentional discrimination. In *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), the Supreme Court held that plaintiffs would state an actionable constitutional violation where the municipal boundaries of the city of Tuskegee, Alabama, were transformed from a square shape to a bizarre, 28-sided-figure, which

removed from the city all but 4 or 5 of the 400 African American voters, while not removing any white voters. Such evidence is "tantamount" to a mathematical demonstration that the challenged legislation was solely concerned with fencing black citizens out of the town, depriving them of their pre-existing municipal vote. *Id.* at 341.

In *Rogers v. Lodge*, 458 U.S. 613, 628 (1982), the Supreme Court affirmed a finding that maintenance of an at-large election system was racially discriminatory in violation of the Constitution. Noting that "[t]he ultimate issue in a case alleging unconstitutional dilution of the votes of a racial group is whether the districting plan under attack exists because it was intended to diminish or dilute the political efficacy of that group," the Court found that the maintenance of an at-large system was for invidious purposes, even though it was racially neutral at adoption. *Id.* at 621, 616. The Court noted that evidence of historical discrimination and racially polarized voting was relevant to drawing an inference of purposeful discrimination, in part because "[v]oting along racial lines allows those elected to ignore black interests without fear of political consequences." *Id*. at 623.

During trial arguments, the State relied heavily on *Cromartie v. Easley*, 532 U.S. 234 (2001), for the proposition that the Supreme Court had endorsed discrimination along racial lines so long as race was highly correlated with partisanship. Defendants are wrong on two levels: first, even where there is correlation between party and race, the State is not free to discriminate against voters of color by claiming that it is only discriminating against Democrats; and (2) the conclusions from *Cromartie* are applicable when analyzing other plausible explanations for racial gerrymanders, not intentional acts of vote dilution on the basis of race. If the first mistaken proposition were true, jurisdictions would have carte blanche to discriminate against any minority group that was politically cohesive—all that would be necessary would be a front

of a political excuse. The second erroneous conclusion is specifically belied by the Court's analysis in *Bush v. Vera*, 517 U.S. 952 (1996), where the principal opinion states "[i]f the district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify." *Id*. at 968. Thus, the correlation between race and politics is only a potential defense to whether strict scrutiny applies to a redistricting scheme. It does not in any way apply in a case where defendants have unconstitutionally and intentionally diluted the vote of minorities.

Finally, Defendants also err in their understanding of Fourteenth Amendment precedent by claiming that if a district is not absolutely compelled by the Voting Rights Act, Texas has free reign to dismantle that district in whatever way it sees fit. The Supreme Court has rejected that reasoning. In *Bartlett v. Strickland*, 556 U.S. 1 (2009), Justice Kennedy noted, even while saying the crossover district in that case was not compelled by the Voting Rights Act, that "if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Id*. at 24.

II. THE LAW GOVERNING CLAIMS OF VOTE DILUTION OR DISCRIMINATORY EFFECT UNDER THE VOTING RIGHTS ACT

A. General Considerations

Section 2 of the Voting Rights Act of 1965 prohibits what is known as "vote dilution" in redistricting plans. A plaintiff may prove a Section 2 claim by first establishing the three *Gingles* preconditions: (1) that the minority group in question is "sufficiently large and geographically compact to constitute a majority in a single-member district; (2) that the minority group is "politically cohesive"; and (3) that the "majority votes sufficiently as a bloc to enable it…usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 427 U.S. 30, 50-

51 (1986). If the three *Gingles* preconditions are proven, a reviewing court must then determine whether the "totality of circumstances" indicates that minority voters have been denied equal opportunity to participate in the political process. *Johnson v. DeGrandy*, 512 U.S. 997, 1009-12 (1994).

1. The Gingles Pre-Conditions

To satisfy the first *Gingles* precondition, plaintiffs must show "the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice. *Johnson*, 512 U.S. at 1008. The Fifth Circuit's interpretation of the first prong of *Gingles* requires that plaintiffs show that minority voters in a proposed district will comprise a majority of the citizen voting age population in the district. *See Perez v. Pasadena I.S.D.*, 165 F.3d 368 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000).

But to be clear, the Supreme Court has never held that the 50%+1 requirement under the first prong of *Gingles* applies in a case where intentional discrimination was at play. Indeed, it has stated the opposition to be true: in *Bartlett v. Strickland*, the court noted: "[n]or does this case involve allegations of intentional and wrongful conduct. We therefore need not consider whether intentional discrimination affects the *Gingles* analysis. Our holding does not apply to cases in which there is intentional discrimination against a racial minority." 556 U.S. at 20 (internal citations and quotations omitted).

The second and third *Gingles* prongs are usually referred to, jointly, as "racially polarized voting"—that is, plaintiffs must demonstrate that minority voters support one candidate, while white voters support an opposing and often winning candidate. Several Supreme Court-approved methods exist for determining whether racially polarized voting occurs in a given area. In *Gingles*, the Supreme Court explicitly endorsed use of homogenous precinct analysis and

ecological regression analysis to determine the extent to which voting in an election is racially polarized. *Id*. at 52-53. Additionally, a court may consider anecdotal evidence in its examination of racially polarized voting. *Overton v. City of Austin*, 871 F.2d 529, 536-537 (5th Cir. 1989); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989).

The second and third *Gingles* preconditions do not require perfectly absolute polarization—that is, minority voters need not be perfectly cohesive, and neither do Anglo voters. Instead, all that is required is a showing that a showing that "a significant number of the minority group members **usually** vote for the same candidates." *Gingles*, 478 U.S. at 56 (emphasis added). This is equally true in the context of coalition districts, where the Fifth Circuit has specified that "the determinative question is whether-black supported candidates receive a majority of the Hispanic and Asian vote; whether Hispanic supported candidates receive a majority of the black and Asian vote; and whether Asian-supported candidates receive a majority of the black and Hispanic vote in most instances." *Brewer*, 876 F.2d at 453. Analysis of general elections is most probative in answering that question, as that is where voters have an ability to elect, rather than to simply nominate, candidates of their choosing. 42 U.S.C. § 1973(b) (stating that a violation occurs where members of the protected class have less opportunity "**to elect** representatives of their choice") (emphasis added).

2. The "Totality of Circumstances" Considerations

An analysis of Section 2 claims is not as formulaic as the three preconditions might suggest. Much more goes into understanding whether vote dilution is occurring—a reviewing court must also consider the "totality of circumstances"—that is, examine the challenged practice in its current and historical context. When determining whether vote dilution has occurred under the totality of circumstances, courts generally are guided by the so-called "Senate Factors" or

Zimmer factors identified in a United States Senate report accompanying the reauthorization of the Voting Rights Act in 1982. A Court must make a searching examination of the past and present political realities, even though it will be the rare case in which plaintiffs have established the *Gingles* preconditions that they cannot also show that, in the totality of circumstances, minority voters have less opportunity than Anglo voters to participate in the electoral process and to elect candidates of their choice. *See, Shirt v. Hazeltine*, 461 F.3d 1011, 1021 (8th Cir. 2006); *Vecinos De Barrio Uno v. City of Holyoke*, 72 F.3d 973, 983-984 (1st Cir. 1995); *Jenkins v. Reed Clay Consol. Sch. Distr. Bd. of Educ.*, 4 F.3d 1103, 1116 n. 666, 1135-36 (3rd Cir. 1993).

The factors elucidated by Congress that are relevant to Section 2 liability are: the extent of any history of official discrimination that touched the minority group members' rights to register, to vote, or otherwise to participate in the democratic process; the extent to which voting is racially polarized; the extent to which potentially discriminatory practices or procedures, such as unusually large election districts, majority vote requirements, or anti-single-shot provisions, have been used; if there is a candidate slating process, whether minority candidates have been denied access to it; the extent of any discrimination against minorities in education, employment and health, which might hinder their ability to participate effectively in the political process; whether political campaigns have been characterized by overt or subtle racial appeals; the extent to which minority group members have been elected to public office; whether there is a lack of responsiveness on the part of elected officials to the minority group's particularized needs; and whether the policy supporting the use of the voting policy or practice is tenuous. *Gingles*, 482 U.S. at 36-37 (citing S. Rep. No. 97-17, at 28-29, 1982 U.S. Code Cong. & Admin. News 177).

B. Updated Demographic or Statistical Studies to Prove VRA Claims

It is clear that as part of the searching inquiry into the past and present realities of minority voting opportunities, courts can and should consider, and plaintiffs may rely upon, updated demographic or statistical studies. In trial, the state raised relevance objections to post-2011 population and election data presented by the NAACP Plaintiffs and by the Mexican American Legislative Caucus Plaintiff. Such post-enactment evidence is relevant to the Section 2 inquiry because "given the long term nature and extreme costs necessarily associated with voting rights cases, it is appropriate to take into account elections occurring subsequent to trial." *Westwego Citizens for Better Gov't*, 906 F.2d 1042, 1045 (5th Cir. 1990) (per curiam); *see also Collins v. City of Norfolk*, 883 F.2d 1232, 1243 (4th Cir. 1989) (elections subsequent to 1984 trial considered by trial and appellate court). Moreover, the Supreme Court and a broad array of lower courts have recognized that an "effects" analysis under Section 2 requires a "searching practical evaluation of the past *and present* reality" of the challenged electoral system in operation. *Gingles*, 478 U.S. at 45 (emphasis added). Understanding that "present reality" requires an assessment of the actual current conditions in which a redistricting plan operates, which in turn requires the most recent evidence available. Thus, courts evaluating voting laws under Section 2 and Section 5 (when it was in effect), routinely looked to post-enactment evidence. *See, e.g., Brown v. Detzner*, 895 F. Sup. 2d 1236 (M.D. Fla. 2012); *Texas v. Holder*, No. 12-218, slip op. at 10 (D.D.C. June 5, 2013) (order granting motion to compel production of post-enactment documents and communication); *Favors v. Cuomo*, 11-CV-5632 (DLI)(RR)(GEL), slip op. at 9-15 (E.D.N.Y. Aug. 27, 2013) (memorandum and order granting motion to compel production of responsive post-enactment documents); *Baldus v. Members of Wis. Gov't Accountability Bd.*, 2013 WL 690496, No. 11-CV0562, at *2 (E.D. Wis. Feb. 25, 2013) (ordering that the scope of discovery include post-enactment evidence). There is simply

no requirement, in *Gingles* or in any other Section 2 case, that plaintiffs pleading a Section 2 case are limited to evidence in front of the legislature at the time of redistricting.

Part of the post-enactment evidence relied upon by NAACP Plaintiffs and others relates to election data relevant to the second and third prongs of *Gingles*. Additionally, the NAACP Plaintiffs called expert witness Anthony Fairfax to testify about the current (2014) population of proposed districts, relevant to the first prong of *Gingles*. In order to conduct this analysis, Mr. Fairfax utilized the 2008-2012 5-year American Community Survey citizen voting age population data. Tr., July 16, 2014, 889: 13-15 (Fairfax). This data set was obviously not available to the legislature during the 2011, but it is highly relevant and can be used to establish the first prong of *Gingles*. Indeed, the Fifth Circuit and others have explicitly recognized that in regards to a Section 2 claim, updated population data (that is, something other than decennial census data), can be considered as part of the first *Gingles* precondition analysis if that non-decennial census data is convincing and reliable. *Valdespino v. Alamo Heights Indep. Sch. Dist*, 168 F.3d 848, 853 (5th Cir. 1999) (affirming district court's reliance on post-decennial census changes in housing stock in analysis of first prong of *Gingles*); *Johnson v. DeSoto Co. Bd. of Commissioners*, 204 F.3d 1335, 1341-42 (11th Cir. 2000) (affirming district court's reliance on post-decennial census voter registration data in analysis of first *Gingles* prong).

Likewise, MALC expert Dr. Robert Brischetto considered post-enactment evidence (2012 election results) to provide this Court with further data, and a more current understanding of the political reality for certain geographies. In particular, Dr. Brischetto examined 2012 races in Bell and Ft. Bend Counties to analyze the degree of polarization between minority and non-minority voters in these two exceptionally diverse counties. MALC Ex. 164. Such updated

analyses as those performed by plaintiffs' experts, beyond being relevant and allowable, are critical to the Court's understanding of present realities of vote dilution.

C. Coalition Districts

Additionally with regard to the first prong of *Gingles*, this Court may have to address the issue of coalition districts. The Fifth Circuit has held that plaintiffs must show that minority voters in a proposed district will comprise a majority of the citizen voting age population in the district. *See Vadelspino*, 168 F.3d at 852. In the cases establishing this rule, plaintiffs were seeking to create, and prove effective, new single-member districts where the challenged system was an at-large one. That 50% CVAP rule does not and should not apply where plaintiffs seek to protect under Section 2 an already existing and performing minority district.

Moreover, at least five cases from the Fifth Circuit have found that minority groups can be aggregated for the purpose of asserting a Section 2 claim. *See League of United Latin Am. Citizens Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (*rehearing en banc*), *cert. denied* 114 S. Ct. 878 (1994) ("[i]f blacks and Hispanics vote cohesively, they are legally a single minority group); *Overton v. City of Austin*, 871 F.2d at 538 (concluding that Section 2 permitted the court to order as remedy a district in which Mexican-Americans, although not a majority, could be aggregated with blacks to achieve such a result, if the two groups could be shown to be politically cohesive and that Anglos voted in bloc); *Brewer v. Ham*, 876 F.2d at 453 ("minority groups may be aggregated for purposes of claiming a Section 2 violation"); *Campos v. City of Baytown*, 840 F.2d 1240, 1244-45 (5th Cir. 1988) ("a (coalition) minority group is politically cohesive if it votes together") *reh'g denied*, 849 F.2d 943, *cert denied*, 492 U.S. 905 (1989); *League of United Latin Am. Citizens Council No. 4386 v. Midland ISD*, 812 F.2d 1494, 1501-02 (5th Cir. 1987), *vacated on other grounds*, 829 F.2d 546 (5th Cir. 1987) (en banc). This

makes good sense from a fairness perspective, too. In many of the more urban parts of the state, racial minority groups live in close proximity to each other. It simply is not possible to carve them apart from each other in order to draw single-race majority-minority districts, nor should that kind of precise racial parsing be encouraged.

Additionally, the Voting Rights Act was enacted primarily to protect the voting rights of African-Americans and Latinos both, as well as other groups such as Asians and other language minorities. Logically speaking, it does not make sense to conclude that the law protects both individually but that it does not protect them jointly, even though both would benefit from such an interpretation. And although it is not a dispositive on the issue, the Court can look to the testimony of the African-American Congresspersons in this case to determine that each was in Congress when the law was extended back in 2006 and it was their recollection that the extended law was intended to protect coalition districts.

III. EVIDENCE RELEVANT TO THE NAACP'S AND AFRICAN-AMERICAN CONGRESSPERSONS' INTENTIONAL DISCRIMINATION CLAIMS

While the 2011 state house plan was enacted during regular session, and the Congressional plan was enacted in an immediately following special session, the evidence on intentional discrimination in both of the plans is intertwined. The record in this case is replete with the kind of circumstantial evidence of discriminatory intent described in *Arlington Heights*, and when viewed as a whole, that evidence can only be reasonable construed as reflective of the intentional steps the legislature took to dilute and minimize minority voting strength. Though not an exhaustive list, some of the most glaring pieces of evidence are: (1) the failure to create any additional minority opportunity districts; (2) legislatively-created façade of public involvement, and departures from typical legislative process (3) the obvious and inexplicable fracturing of minority communities into districts in which they would not be able to exercise any

political power; (4) the removal of economic engines and district offices from districts represented by minority members; (5) the accommodation of trivial requests by Anglo congresspersons; (6) other racially-charged legislation considered in the same session; (7) the tenuous and disingenuous non-racial justifications offered by the state and its map drawers, whose credibility is highly suspect. All such relevant evidence is present in the instant case.

First, the most glaring evidence of the state's intent to discriminate against voters of color is the fact that, despite 90% of the state's population growth coming from minority population growth, resulting in the allocation of four new congressional districts to the state, the state created no additional minority opportunity districts, and in fact destroyed one crossover district. Tr., Aug. 14, 2014, 1384:24-1385:25 (Murray); Tr., July 17, 2014, 1364:15-1365:10 (Korbel). Additional congressional districts are allocated on the basis of total population, not citizen voting age population. And yet the state's mapdrawers and decision-makers admitted that they refused to draw any minority opportunity districts that were not absolutely compelled by law. Additionally, despite concentrated growth patterns, the failure of the state to draw compact, naturally-occurring house and congressional districts that would recognize that growth, and its decision instead to draw irregularly-shaped districts that fragmented minority populations, is further evidence of the deliberate actions taken to dilute minority voting strength. Tr., July 14, 2014, 139:11-18, 147:2-10 (Arrington).

Despite the overwhelming and concentrated minority population growth, those map drawers and decision-makers admitted that they knew that districts that were not majority black would still enable black voters to elect their candidates of choice. Tr., July 18, 2014, 1570:9-17 (Interiano). Just because the Voting Rights Act might not compel a district does not absolve the state of its discriminatory refusal to draw it. Even Republican Congressman Lamar Smith

recognized that state would likely run afoul of federal law if it created no new minority opportunity districts in the Dallas-Fort Worth Metropolex. Even with these admissions that it was possible to enable minority voters to elect their candidates of choice, map-drawers and decision-makers resisted at every turn drawing districts that would create additional opportunities for the population who earned the state four new congressional districts. This is undeniable evidence of discriminatory motivation.

Second, the abnormal process at play in the legislative process that led to the enactment of C185 is more evidence of intent. The legislature conducted "public hearings" in 2010, before there was any census data available, and well before any redistricting maps had been developed. Tr. July 14, 2014, 9:5-17 (Veasey); Tr., July 17, 2014, 1230: 15-1231: 19 (Thompson). This impacted the ability of minority communities to give meaningful input. Tr. July 14, 2014, 9:5-17 (Veasey). These hearings were held during the work week, in the middle of the day, in areas where there little to no public transportation. *Id*. at 9:18-11:25. Again, this impacted the ability for voters of color to participate in any meaningful way in these hearings.

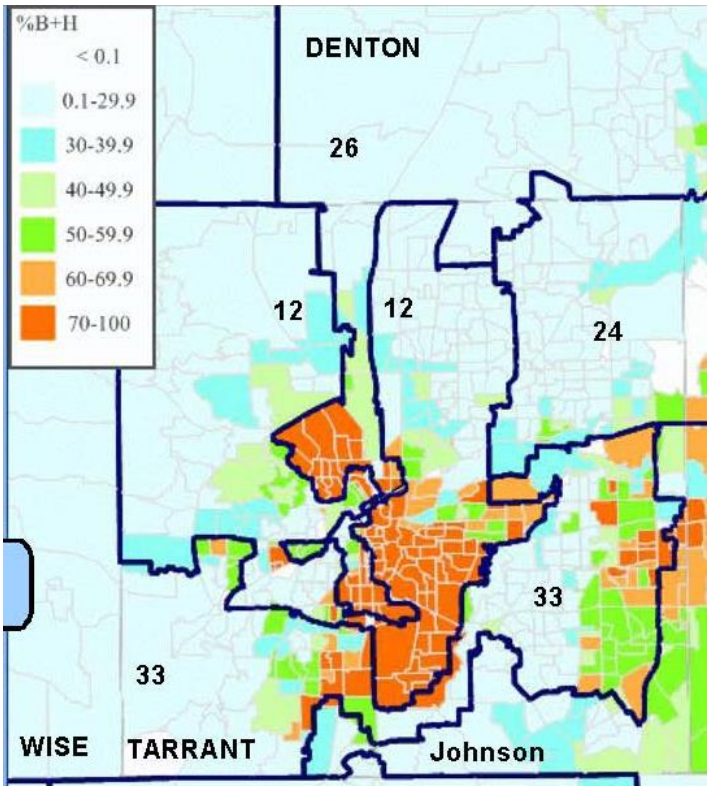
No substantive content from those hearings was collected or disseminated. Indeed, it is also clear that transcripts of at least some of these public hearings were not even available until after the special session ended. Tr., Aug. 14, 2012, 1090:21-1091:4 (Solomons). With respect to the congressional redistricting plan, the legislature rushed the process through a single 20-day special session, even though there was no limit on the number of special sessions that could be called and no chance that the Legislative Redistricting Board would assume control of the redistricting process. Tr., Aug. 11, 2014, 341:9-15 (Seliger). This unnecessary rush cemented the exclusion of meaningful input from

Rep. Senfronia Thompson, a 42-year veteran of the state legislature, testified that the way that the redistricting process was conducted in the 2011 session was a departure from prior practices, and from best practices long established. *Id*. Legislative leadership consistently left minority legislators out in the cold, not revealing to them as they did to other Anglo representatives how the plans were developing. See NAACP 2011 Post-Trial Brief, at 43-49. For example, the authority to make decisions for the state house map for Harris County was given to the all-Anglo delegation from the county, which proceeded to maintain all of the white seats and eliminate one seat held by a minority representative. Tr., July 17, 2014, 1238:14-1239:12 (Thompson). Additionally, Rep. Marc Veasey repeatedly asked Rep. Burt Solomons whether draft congressional maps had been submitted, particularly from the Texas congressional delegation, and asked to see those maps. Tr., Aug. 14, 2014, 1276:20-1279:13 (Solomons). Despite those requests, Rep. Solomons never revealed that the delegation had delivered a map on April 4, 2011, nor did he share those maps. *Id.*

Third, the state engaged in a systematic and purposeful practice of fracturing African-American and Latino communities, both internally and from each other, across the state. This intentional fracturing had the anticipated effect of diluting the ability of these voters to elect their candidates of choice. Despite concentrated growth patterns, the state declined to draw compact, naturally-occurring house districts that would capture and reflect that growth. Instead, map drawers constructed torturously-shaped districts that fragmented minority populations—this is the very essence of intentional vote dilution and a violation of the Fourteenth Amendment. Tr., Aug. 14, 2014, 1395:4-23 (Murray); Tr., Aug. 12, 2014, 407:6-408:6 (Arrington).

One of the most egregious examples is in Tarrant County. Map drawers extended a tentacle from Congressional District 26 in Denton County down into Tarrant County to extract

the Latino population. Black voters in Tarrant County were separated from neighboring Latino communities and kept wholly within Congressional District 12. DOJ Ex. 630. Black and brown voters living side by side in Fort Worth were thus teased apart and stranded in districts in which neither would be able to elect their candidates of choice. Tr., Aug. 14, 2014, 1181:6-1182:17 (Moss). Not coincidentally, besides being fractured from each other, these communities were all placed in suburban or rural districts—districts that were not representative of the urban nature of downtown Ft. Worth. Tr., August 14, 2014, 408:22-409:1 (Arrington). Dr. Arrington noted that a large number of precincts were split in Tarrant County, for the observed purpose of grabbing Latino voters for inclusion in suburban districts. *Id*. at 409:14-410:4. He noted that African American communities were also fractured. *Id*. at 419:12-14.



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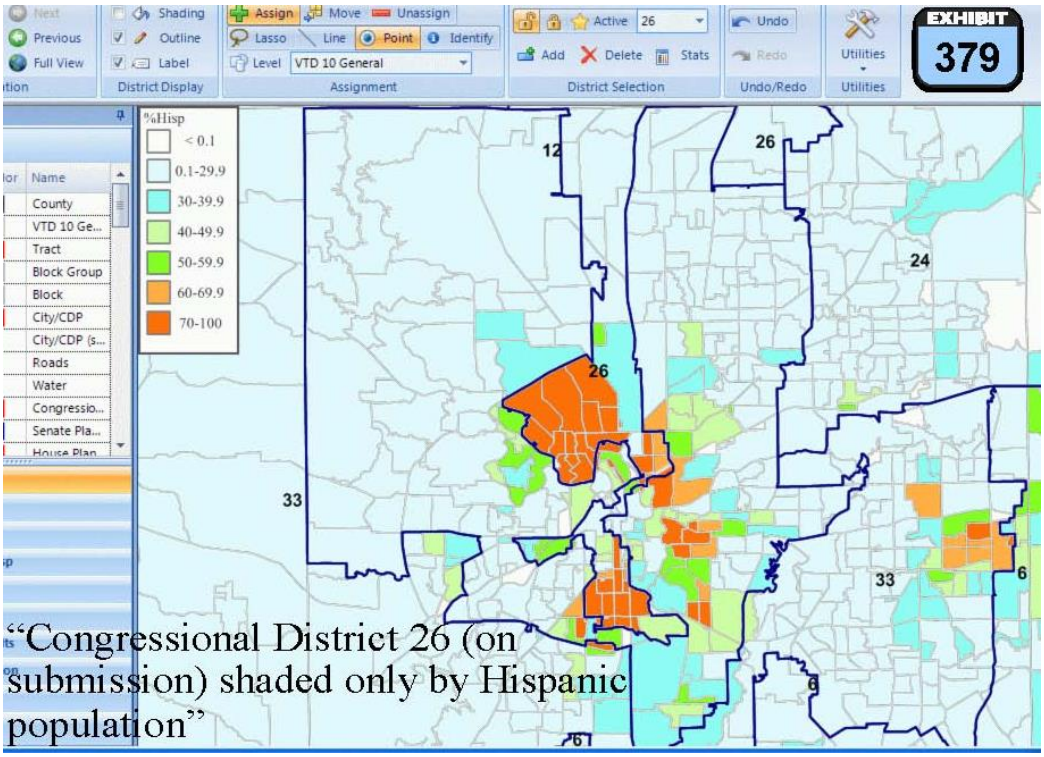

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This strategic fracturing was also evidenced in Travis County. Voters in that county have a long and demonstrated history of multi-racial coalition. C185 destroys that coalition, removing Latino voters for inclusion in a San Antonio-based district and fracturing the African American population in East Austin into several districts, none of which will elect the candidate of choice of black voters. Tr., Aug. 13, 2014, 1025:20-1026:3 (Travillion); Tr., Aug. 13, 2014, 817:14-118:22 (Rodriguez). Finally, the fracturing of historic and politically active African-American communities was rampant in Harris County as well, with communities like Third Ward/MacGregor neighborhood being fractured amongst districts. Tr., Aug. 15, 2014, 1451:7-1452:8 (Murray). Across the board, this fracturing was so precise, and so destructive that it can be explained only by an intent to undermine the emerging political power of minority voters.

Relatedly, there is no meritorious dispute that racially polarized voting is rampant across almost all of Texas, and that fact is also relevant to the fracturing evidence. As the Supreme

Court noted in *Rogers*, evidence of racially polarized voting "bear[s] heavily on the issue of purposeful discrimination. Voting along racial lines allows those elected to ignore black interests without fear of political consequences." 458 U.S. at 623. The mapdrawers fractured minority communities enough that the racially polarized voting they knew existed could finish the intended job.

Fourth, the precise and consistent removal of economic engines and politically-active minority communities from the districts represented by minority Congresspersons is further evidence of discriminatory motive. To be sure, whenever redistricting takes place, and district lines have to be changed in order to accommodate population growth or additional districts, there is the potential for the loss of economic engines. But the districts represented by the African-American congresspersons needed very little change with respect to population. And none of the districts were geographically shifted in any significant way. Instead, precise surgery was performed on the edges of the districts, needlessly removing areas of economic growth—areas with little population—for no explicable reason.

For example, C185 removed many of the areas where Congressperson Johnson had done substantial work on economic development, including the downtown area where she had worked to secure funding for a Dallas area rapid transit system. Tr., Sept. 12, 2011, 1276:10-13 (Congresswoman Johnson). C185 also removed both Congressperson Johnson's home and district office from the district. While the initial removal of her home could have plausibly been accidental, the failure to put it back when notified of that error could not have been. Congressperson Johnson was told to work with Congressman Smith on her district, and she did just as instructed. *Id*. at 1277:14-16.

Congresswoman Johnson testified that the meeting with the Texas delegation was put together by Gerardo Interiano. Tr. 682:24-683:18, August 12, 2014 (Johnson). And she indicated at that meeting, representatives of the Speaker of the House, Representative Aaron Pena, representatives of the Governor and Attorney General were present. *Id.* Further, she indicated that she was instructed that the person to submit information to, in addition to Lamar Smith, was Eric Opiela. State authorities were being represented at that meeting and it was arranged by Mr. Interiano. It was thus clear that the group was an official group laying out an official directive. In fact, Congressman Green testified in 2011 that he too tendered information to Lamar Smith. Tr. 1351:17-1353:10, September 12, 2011 (Green).

Congresswoman Johnson specifically and directly communicated with the drafters of the map that her home and office were left out of the proposed district and she wanted that corrected. It was corrected in the map that the delegation submitted to legislature, but not in the final enacted plan. Tr. 1278:19-1279:2.1278:19-1279:2, 2011 (Johnson). When the Congressional Plan was initially released with the same essential version of CD30, Johnson's staff emailed Opiela and provided Mr. Opiela and Congressman Smith with necessary information including that her home was not in the plan as drawn. Tr. 686:12-687:4, August 12, 2014.

A pattern starts to emerge with Congressman Al Green's district. Congressional District 9 in Harris County also lost its district office. Many important district elements were removed from CD 9, including the district office. Tr., Sept. 12, 2011, 1335:2-7 (Congressman A. Green). The Astrodome and the Medical Center were removed from the district. *Id.* at 1335:16-20. Another important economic element removed from the district was the rail line between Houston and Missouri City. That rail line ran along U.S. 90A. Congressman Green was able to have placed in an appropriations bill a million dollars to get started with that project. *Id.* at

1335:21-1336:2. The Hiram Clarke neighborhood, a politically active and predominantly African American neighborhood, was removed from the district in C185. *Id.* at 1336:3-5. When Anglo Congresspersons lost such engines, those engines were replaced with others. Tr., Aug. 12, 2014, 715:3-6 (Johnson).

The pattern is cemented with how Congressperson Sheila Jackson-Lee's district was treated. Like with the other districts represented by African Americans, CD 18 had its district office removed. Prior to the 2011 congressional redistricting phase resulting in C185, the downtown business community formed the heart of the 18th congressional districting. It had little population, but served as the largest economic engine in the district. Tr., Sept. 12, 2011, 1512:1-4 (Congresswoman Lee); Dep. Tr. Sept. 2, 2011, 15:7-16:1 (Lee). Additionally, under C185, CD 18 had important communities of interest slashed away, including the Third Ward and MacGregor areas. Tr., Sept. 12, 2011, 1512:5-7 (Congresswoman Lee); Dep. Tr. Sept. 2, 2011, 11:11-12:17 (Lee). To this day, the state has never offered an excuse more substantive than mistake or coincidence. Neither is believable.

The ability to elect a candidate of choice is significant for more than just the mere election of that candidate—it is about the tangible benefits that flow from that ability. A candidate responsive to the community's needs will bring economic generators that will benefit that community. The removal of economic generators from minority districts that did not need modification for population or geographic reasons constitutes an invidious taking to the detriment of the voters in those districts. Likewise, the removal of district offices from those districts is also problematic. While a small handful of Anglo members of Congress did lose their district offices, that still does not explain how all three African American members lost their district office. C185 took Congresswoman Jackson-Lee's district office (located in the same

building as it had been since Barbara Jordan was the member) out of CD18, which is significant because the congressional MRA (Member's Representational Allowance) does not allow a member to rent any place that is not in the congressional district. Dep. Tr. Sept. 2, 2011, 41:4-43:22 (Congresswoman Jackson-Lee). The consistent harm inflicted on these districts by the lines drawn in C185 just reinforces the unavoidable conclusion that discrimination was a motivating factor.

Fifth, the shameful way that minority districts were treated is more apparent when compared to how Anglo districts were treated, and the myriad of trivial Anglo requests that were honored. For example, Congressman Kenny Marchant asked that his granchildren's school be included in his district, and Congressman Lamar Smith asked for a San Antonio country club to be included in his district. LRTF Ex. 311, Doc 117-5, filed 8/5/11, p. 31; LRTF Ex. 311, Doc 156-2, filed 8/9/2011, p. 16. Congresswoman Granger requested downtown Fort Worth in her district. LRTF Ex. 211, Doc. 117-6, filed 8/5/2011, at p. 12. These requests were accommodated.

In contrast, the requests of African American members of Congress, with respect to much more significant parts of their district, were not accommodated. Congresswoman Eddie Bernice Johnson testified that she did give feedback on what needed to be changed, through the designated communications channels. Her requests were not accommodated. Congresswoman Sheila Jackson Lee sent a strongly worded letter the day that C125, a proposed congressional plan, was released, seeking revisions to her district before the final enactment. NAACP Ex. 608. Unlike the trivial requests made by Anglo members, these requests, relating to enormously important changes to districts that enable African American voters to elect their candidates of choice, were not accommodated.

Sixth, the 2011 legislative session was marked by racial tensions, and this is relevant to the analysis of the intentional discrimination claims. Another Texas court recently recognized that a number of bills introduced during that session exhibited anti-minority or anti-Hispanic sentiment. *Veasey v. Perry*, 13-cv-00193 (S.D. Tex. October 9, 2014), at Doc. No. 628, p. 132. The legislature that session also considered a voter ID bill (since found to be intentionally racially discriminatory), a bill that would limit voter assistance, anti-immigration laws, and the "Sanctuary Cities" bill. Each of these 2011 measures were opposed by Latino and African-American members of the legislature because of the racially discriminatory effect that these bills would have, among other reasons, and they sparked emotional and charged debate. Tr., Sept. 8, 2011, 811:24-812:23 (Rep. Sylvester Turner).

Seventh, the credibility of the mapdrawers Gerardo Interiano and Ryan Downton, and House Redistricting Chair Burt Solomons are all so suspect as to warrant the conclusion that impermissible racial discrimination was a motivating factor. For example, Gerardo Interiano assumed primary responsibility for drafting the state house plan, and did some work on the Congressional plan. Despite his assertions that he was not using racial shading on a census block level, it is simply implausible that a mapdrawer with approximately 1,0000 hours of training on RedAppl, drawing protected minority districts, would not be using that basic feature of the software. Tr., July 18, 2014, 1599:22-24 (Interiano). He also asserted, implausibly, that he did not know at the time that election data was not reliable below the precinct level. *Id*. at 1590: 14-25. Again, this is simply implausible given the hours he spent training on the software. Instead, in example after example after example, district lines carefully split precincts, below which accurate political data was not available, in a way that was clearly designed to split apart naturally-occurring minority communities and minimize their political power.

Members of the Legislative Black Caucus felt like Interiano was just humoring them, and not substantively incorporating any of the suggestions for their districts. Tr., July 17, 2014, 1251: 6-19 (Thompson).

Ryan Downton, the primary line-drawer for the congressional plan, claimed to have been motivated to completely cleave the Latino community from the African American community in Tarrant County because he read on a Democratic blog that the first publicly available plan, C125, split the Latino community within Tarrant County. Tr., Aug. 15, 2014, 1627:19-1628-15 (Downton). Given the enormous amount of work Downton was expected to accomplish in such a short period, the idea that he was perusing obscure left-leaning blogs is laughable. His explanations for why the CD 6 lightning bolt in Tarrant County shifted so precisely to capture the Latino community also strains credibility, and are inconsistent with each other. Tr., Aug. 15, 2014, 1612:7-16; 1614:1-11 (Downton). Over the course of the litigation, stories and justifications have changed, and the end result is still undeniable—minority voters suffered substantial harms in C185.

Rep. Solomons' credibility is also suspect. His story changed throughout the course of the litigation. For example, in 2011, Rep. Solomons testified that Congresswoman Sheila Jackson Lee did, when they met in person, tell him about the parts of her district she liked or was satisfied with. Tr., Sept. 13, 2011, 1627:17-1628:7 (Solomons). Yet when he testified in 2014, Rep. Solomons was adamant that Congresswoman Jackson-Lee never mentioned any parts of her district that she liked. Tr., Aug. 14, 2014, 1372:9-1374:4 (Solomons). This is a self-serving change in recollection.

The justification proffered by the state that C185 was motivated solely by an intent to discriminate against Democrats is a disingenuous ploy that relies on a plainly incorrect reading

of Fourteenth Amendment precedent. Dr. Arrington testified for the United States that using party as a justification to take action against racial and ethnic minorities was essentially a pretext in light of current voting patterns. Tr. 397:7-22, August 12, 2014 (Arrington). Dr. Murray and Congresswoman Eddie Bernice Johnson testified that it has been and still is whites in Texas who discriminate against racial and ethnic minorities—where once it was once the Democratic Party, it is now the Republican Party. In C185, 88 percent of Anglos were in districts where their race could dominate the outcome and only 44 percent of Latinos where in such districts. Tr. 1402:12-1403:4, August 14, 2014 (Murray). All three African-American Congresspersons losing their district offices and only 1 of 23 or 24 Anglo Congresspersons, and Dr. Murray it was highly unlikely this occurred as a result of chance. Tr. 1411:8-22, August 14, 2014 (Murray).

The racial gerrymandering cases that the state has relied upon apply in situations in which abnormal shapes of districts are just as explainable by partisan reasons as they are by racial reasons. This is not the case here, where the legislature refused to share control of the newly-allocated congressional districts with the very population that earned Texas those districts. Moreover, those cases cannot be read as a free pass to discriminate against voters of color, long marginalized and excluded from the political process, simply because of the way that they vote. Such a reading would undermine the very intent behind the Equal Protection Clause.

Finally, with respect to remedy of the intentional discrimination infecting the drawing of Congressional Districts 9 and 18 in the 2011 plan, Dr. Richard Murray's 2014 supplementary report he indicates that the 9th and 18th as drawn in the interim map are acceptable remedies. NAACP Ex. 650. The district offices are restored, communities of interest have been put back together and largely the economic engines have been restored as well. The character of the 9th and 18th were unnecessarily put at risk by C185, and particularly CD9. Importantly, other

competing plans such as the one tendered by Representative Dukes are inadequate to preserve the integrity of those districts and she has withdrawn her support for the Harris County portion of her plan. Dawnna Dukes. Tr. 288:18-290:15, October 31, 2011 (Dukes). Dr. Murray further testified that it is possible to draw seats that provide for new Latino representation in the area without disturbing the 9th and the 18th. Tr. 1493:2-12, August 15, 2014.

IV. EVIDENCE RELEVANT TO THE NAACP'S AND AFRICAN-AMERICAN CONGRESSPERSONS VOTE DILUTION/DISCRIMINATORY EFFECT CLAIMS

Over the course of this litigation's three trial segments, Joint Plaintiffs have demonstrated that it was possible to create additional minority opportunity districts in both the state house and congressional redistricting plans. With respect to each proposed additional district, Joint Plaintiffs have demonstrated that the three *Gingles* preconditions are satisfied, and under the totality of circumstances, VRA remedies are warranted.

In the three years since this litigation has commenced, no one can reasonably doubt that the trend of minority population growth in Texas has continued. And that trend can be quantified. NAACP expert Anthony Fairfax did quantify that mid-decade growth for the Court. And what that data indicated was that these districts even more amply satisfy the first prong of *Gingles*, some of which the extent to which this Court need not even consider the issue of coalition.

As an initial matter, the methodology that Mr. Fairfax employed in making his population projections is clear, cogent and convincing, and has a high degree of accuracy. It thus satisfies the legal requirements necessary for its use to establish the first prong of *Gingles*. Unlike in other cases where population projections were found to be too unreliable to supplant decennial census data, *Perez v. Pasadena I.S.D.*, 958 F. Supp. 1196, 1211 (S.D. Tex. 1997) and *McNeil v.*

Springfield Park District, 851 F.2d 937, 946 (7th Cir. 1988), Mr. Fairfax analyses employed several distinguishing (and validating) elements. First, Mr. Fairfax relied on very recent county-level growth trends, specific to the district in question, for his projections, unlike the statewide decades-old growth trends used in *Perez*. More specifically, in *Perez*, plaintiffs' expert applied simple and fixed annualized growth rates for Latinos, African-Americans and Anglos. *Perez*, 958 F. Supp. at 1206. As Mr. Fairfax testified, the county-level growth rates he calculated and then applied were much narrower temporally and geographically. He also conducted both linear and geometric extrapolations, both of which confirmed his conclusions and produced substantially similar results. Tr., July 16, 2014, 913: 5-8 (Fairfax). Second, Mr. Fairfax was able to test the accuracy of his projections, which is something that experts in *Perez* and *McNeill* were not able to do. *Id*. at 898:14-25; *see also*, *McNeill*, 851 F.2d at 946; *Perez*, 958 F. Supp. at 1211.

This brief will now address each additional minority opportunity district in turn.

A. House District 54

Plan 202 introduced by the Texas Legislative Black Caucus during the legislative process created a new minority opportunity district in Bell County. While this district was a majority minority district in 2011 (28.7% BCVAP, 17.7% HCVAP, 3.2% Asian CVAP, 0.8% Indian American and 46.4% Anglo—Ex. 2011 Joint Maps J-25, Red-100, Red-106), Mr. Fairfax's analysis, presented in the 2014 trial, indicates that the district's minority population has grown in the ensuing years. According to Mr. Fairfax's testimony, House District 54 in H202 would, as of 2014, be 30.9% BCVAP and 22.3% HCVAP, for a combined black and Latino CVAP of 53.29%. Tr. July 16, 2014, 912:6-15 (Fairfax).

Moreover, the city of Killeen is an exceptionally diverse city, unlike any other in the state of Texas, in part because of its unique relationship with Ft. Hood. Tr., July 18, 2014, 1706:6-12,

1707:4-9 (Jones). These are regions of the county that, because of their unique interests, benefit greatly from being kept whole and together. Tr., July 18, 2014, 1706:6-12 (Jones). Additionally, the city of Killeen experienced tremendous population growth over the last decade. Tr., July 18, 2014, 1706:19-25 (Jones). Indeed, District 54 in the benchmark plan was overpopulated largely because of the population growth in Killeen. Tr., July 17, 2014, 1401: 25-1402:4. Once Burnet County was removed from HD 54, the district was short 13,000 voters. Instead of adding those voters to the existing core of HD 54 in Bell County, which already contained virtually the entire city of Killeen, the enacted plan took out 32,000 voters from Killeen, almost two thirds of whom were minority voters. Anglo voters were then added in to make up for the removal of minority voters. Tr., July 17, 2014, 1402:5-1405:7 (Korbel).

Minority voters in Killeen face persistent disparate treatment on Election Day. From lack of translators for Latino voters, to more rigorous questioning about identification documents, voters of color have a different experience when trying to participate in the political process than do Anglo voters. Tr., July 18, 2014, 1699:9-1703:6 (Jones)

In addition to the bonds created by sharing commonalities related to the adjacent military base, minority voters in Killeen have a demonstrated ability to work in coalition to elect their candidates of choice. Over the years, minority voters in the majority-minority city of Killeen have had substantial success in electing their candidates of choice to city offices. Latino and black voters supported a black candidate who successfully ran for mayor of Killeen—Timothy Hancock. Tr., July 18, 2014, 1695:8-23 (Jones). Both groups also supported Juan Rivera, a Latino candidate elected to Killeen City Council. The multi-racial coalition also supported African American candidates Steve Harris and Dr. Claudia Brown in city council races. Tr., July 18, 2014, 1705:3-22 (Jones). In comparison, Bell County, which is majority white, currently has

no members of color on the county commission or serving as a judge. Tr., July 18, 2014, 1708:20-25 (Jones). And when voters of color united behind City Councilwoman Dr. Claudia Brown in a challenge to the current representative from HD 54, Rep. Jimmie Don Aycock, those efforts were defeated by the Anglo majority. Tr., July 18, 2014, 1705:3-1706:1 (Jones). Rep. Aycock is not the candidate of choice of voters of color because he has not been responsive to their interests. Tr., July 18, 2014, 1703:12-1704:12 (Jones). He acknowledged voting for many issues opposed by the NAACP and by voters of color in his district. Tr., July 18, 2014, 1751:1-1752: 12 (Aycock).

MALC expert Dr. Robert Brischetto performed a racially polarized voting analysis of 2012 State House election in Bell County that confirmed the lay witness testimony offered by the NAACP. He noted that "[f]or State Representative District 54, where there was a contest between Aycock, the Republican, and Brown, the Democrat, we found almost nine out of ten of the Anglo voters -- that's the first column of numbers – supported Aycock, whereas eight out of ten of the Latino voters supported Brown. Nine out of ten of the black voters supported Brown,and seven out of ten of the Asian -- mostly they are Asian voters -- supported Brown." Tr., July 16, 2014, 955:10-19 (Brischetto). In his expert opinion, Dr. Brischetto concluded that voting was highly polarized between minority and non-minority voters, and that non-minority voters were highly cohesive. *Id*. at 955:20-25.

Testimony offered in 2014 from the state's witnesses revealed suspicious inconsistencies with regard to the process for drawing the enacted HD 54. Rep. Jimmie Don Aycock testified that he met with Ryan Downton with regards to the construction of HD 54, but that he, Rep. Aycock, did not himself move around the lines of the district. Tr., July 18, 2014, 1755: 1-9 (Aycock). Indeed, he averred that he was not good with RedAppl. *Id*. at 1730:5-6. Yet Ryan

Downton testified that he did not draw the district, but instead was given a district version by Rep. Aycock. Tr., July 19, 2014, 2132:25-2133:6 (Downton). This is a district that fragmented a significant chunk of a concentrated minority population of Killeen, and no one wants to take credit for that or provide a plausible, non-race-based reason for that. No such plausible reason has been provided to this Court.

B. McLennan County

McLennan County was the subject of redistricting litigation back in the early 1970's. Tr., July 17, 2014, 1441:15-1442:22 (Korbel). As a result of that litigation the State was ordered to create a district that would fairly reflect the voting strength of the minority communities of McLennan County and surrounding areas. *Id*.; *see also, Graves v. Barnes,* 378 F. Supp. 640 (W.D. Tex. 1974). That historic district was formerly numbered HD57 and included McLennan, Falls, Robertson and Brazos counties. Perez Plaintiffs' Exhibit 172, Tab 6 (Korbel). The resulting district elected Lane Denton, his wife Betty Denton and later Jim Dunnam. Tr., July 18, 2014, 1828:5-1829:14 (Gibson). The Dentons and Dunnam were the candidates of choice of the African-American and Latino communities and were generally responsive to their concerns. *Id*. There has generally been a coalition between African-American and Latino voters in McLennan County. *Id*. at 1830:1-10. Commissioner Lester Gibson, a McLennan County Commissioner for nearly three decades, testified that he, an African-American, was the candidate of choice of the African-American and Latino communities. *Id*. at 1830:11-22. Whites are polarized in voting against minorities and Gibson specifically indicated that such polarization has occurred in regards to issues. *Id*. at 1843:1-11. And although Dunnam was the choice of the minority community, he lost the election in 2010. *Id*. at 1843: 12-18.

In the enacted plan, the Legislature changed the number of the district from HD57 to HD12. Tr., July 17, 2014, 1444:1-5 (Korbel). It also changed the district to take out minority precincts in McLennan and Brazos counties and it added Limestone County to the district. *Id*. at 1443:16-23. Major voting boxes such as 12 and 14 were taken out of the district. Tr., July 18, 2014, 1841: 12-20 (Gibson). The enacted plan removed more than 23,000 persons from the district who were over 70 percent minority and replaced them with approximately 20,000 persons who were more than 80% Anglo or white. Perez Plaintiffs' Ex. 172, Tab 6 (Korbel). An old district can be drawn that makes it more likely that the minority candidate of choice can prevail by reconfiguring the old district which was nearly majority minority at the time it was deleted. Tr., July 17, 2014, 1445:19-24 (Korbel).

C. House District 107

The Legislative Black Caucus' H202 also created an additional black opportunity district in Dallas County. Even though this district was majority minority in 2011 (26.5% BCVAP and 23.9% HCVAP, 2011 Ex. Joint Maps J-25, Red-100, Red-106), Mr. Fairfax's unrebutted testimony once again demonstrates that the population gains seen from 2000 to 2010 have continued until 2014. As of 2014, House District 107 is now 27.18% BCVAP, 31.57% HCVAP, and a combined black and Latino CVAP of 58.76%. Tr., July 16, 2014, 913: 1-4 (Fairfax).

From 2000 to 2010, the minority population of Dallas grew by 350,000, and the Anglo population decreased by almost 200,000. Tr., July 17, 2014, 1423:2-9 (Korbel). Despite this fact, no new additional minority seats were drawn in Dallas County—and indeed, there is some evidence that a minority opportunity seat in the county was lost. *Id*. at 1423:12-19. Areas in the county where the greatest minority population growth occurred were divided amongst several

districts, with heavy minority populations being carved out and added to already existing minority districts. *Id*. at 1424: 9-23.

In addition to the lay testimony presented in the 2011 trial (*see* NAACP 2011 Post-Trial Brief at 21-29, 32-33, Testimony of Congressperson Eddie Bernice Johnson, Charlie Chen), Dr. Juanita Wallace and Raul Magdaleno both testified to the incredible record of political cohesion between black and Latino voters in Dallas County. African American and Latino voters worked together to elect Elba Garcia to the Dallas County Commission. Tr., July 15, 2014, 568:1-569:10. Dr. Wallace, an African-American, and Bea Martinez, a Latina, coordinated their campaigns for Dallas school board so that they could maximize support for both candidates from the African American and Latino community, and they held many joint events together. *Id*. at 566:1-567:14.

African-American and Latino voters in Dallas County face many of the same hurdles in day to day life. These communities suffer from lack of access to health care, lack of fair educational opportunities and persistent economic disparities. Tr., July 17, 2014, 1134:1-1135:5 (Magdaleno). Schools in Dallas County are still highly segregated, with black and Latinos being concentrated in some schools, and Anglos in others. Tr., July 15, 2014, 572:2-9 (Wallace). Indeed, the testimony before the court includes evidence of a consistent lack of political responsiveness from Anglo elected officials to minority requests for assistance such that minority constituents of the Anglo elected officials had to see the assistance of the minority elected officials in Dallace County. Dr. Wallace also testified to the consistent opposition of the Anglo voters to candidates of choice of the minority community in Dallas County. All of these factors, and others cited in the NAACP's 2011 Post-Trial Brief, demonstrate that black and Latino voters are cohesive and that the totality of circumstances warrants a Section 2 remedy in Dallas County.

D. House District 149

Defendants admit to dissolving House District 149 in Harris County, despite knowing that it was a district in which a diverse group of minority voters elected the candidate of their choice, Hubert Vo, because they did not think the Voting Rights Act compelled them to maintain it. Tr., September 12, 2011, 1482: 13-22 (Interiano). This callous disregard for proven voting rights gains from an extent cohesive minority population is certainly evidence of an intent to discriminate, but even if motivated by mistake rather than by animus, this reasoning cannot save Defendants from liability under the effects prohibition of Section 2.

Prior to the enactment of H283, HD 149 was a compact, naturally-occurring multi-ethnic coalition district whose voters had a proven track record of being politically cohesive and electing their candidate of choice, Rep. Vo. Tr., Sept. 7, 2011, 420:10-17 (Calvert). In 2011, Rogene Calvert supplied this Court with specific evidence of how this multi-ethnic coalition in this region of Harris County faces many of the same issues, is a community of interest, and worked together to ensure the election of Representative Vo. Tr., Sept. 7, 2011, 421:7-10 (Calvert). In 2014, the testimony of Hubert Vo, Scott Hochberg and Senfronia Thompson corroborated that prior testimony, and further fleshed out the deep coalition between these minority groups that has proven its effectiveness over the years. Tr., July 17, 2014, 1246:4-22 (Thompson); *id*. at 1346:10-21 (Vo); July 18, 2014, 1648:1-17 (Hochberg).

H202, like many other demonstrative plans offered in this litigation, restores HD 149, drawing it as a district that was, as of 2011, 34.7% BCVAP, 22.3% HCVP and 18.5% Asian CVAP. Ex. 2011 Joint Maps J-25, Red-100, Red-106. It does so without diminishing the adjacent H137, which is a majority Hispanic district. *Id.* It also does so deferring to the state's policy decision to reduce the size of the Harris County delegation from 25 to 24. Tr., Sept. 7,

2011, 1419:22-1420:9. The destruction of this district deprived minority voters of an equal opportunity to participate in the political process in Harris County, and must be remedied.

E. House District 26

In H202, an additional minority coalition district was created in House District 26 in Fort Bend County. Fort Bend County is adjacent to Harris County, and HD 26 in both the enacted and H202 plans is adjacent to HD 149 in the enacted plan. This is an area in the region that is experiencing substantial population growth amongst a diverse group of voters, mostly minority. Tr., July 17, 2014, 1411: 12-21 (Korbel). The evidence in the 2011 trial indicated that H202 had 23.8% Asian CVAP, 14.5% BCVAP, and 12.9% HCVAP, for a combined CVAP of 51.2%. Ex. 2011 Joint Maps J-25, Red-100, Red-106. Mr. Fairfax's analysis demonstrated that in 2014, the proposed HD 26 was 15.77% HCVAP, 14.10 BCVAP, and 27.18 Asian CVAP, for a combined 57.05% of black, Latino and Asian citizen voting age population. Tr. July 16, 2014, 902: 14-18 (Fairfax).

Instead of drawing compact districts that would recognize the naturally occurring minority district in Fort Bend—that is, the 150,000 more minority voters than Anglo added over the decade—the enacted plan drew HD 26 as an incredibly non-compact district, intended to be one that could be maintained as an Anglo district over the decade. Tr., July 17, 2014, 1412:3-1414:3 (Korbel); *see also* Tr., July 18, 2014, 1607: 8-11 (Interiano). The voters in this region are very similar to the voters who act in tri-ethnic coalition to elect Hubert Vo in HD 149, just across the county line in Harris County. Tr., July 17, 2014, 1422:1-6 (Korbel).

Rep. Senfronia Thompson testified to the political work she has done in Fort Bend County, and the coalition she has witnessed there. The Asian American population in Sugarland, First Colony and West Bend is growing and is politically active. Asian American voters have

supported African American candidates such as Ron Mills. Based on her decades of experience in the area, she averred that HD 26 drawn as a tri-ethnic coalition district would elect an Asian American and the candidate of choice of minority voters. Tr., July 17, 2014, 1245:9-1246:22.

F. Congressional District 34 in C193

Plan C193 is the demonstrative plan developed by the NAACP in 2011 and proffered by the NAACP and the African-American Congresspersons throughout this litigation. It is not a full plan, but contains new minority opportunity districts which establish that the NAACP can satisfy the first prong of *Gingles*. In the Dallas-Fort Worth region, Plan C193 draws two new minority opportunity districts: CD 34 and CD 35. Additional minority representation in the DFW Metroplex is desperately needed because minority voters in Anglo districts are referred to Congresswoman Eddie Bernice Johnson for attention to their concerns. Tr., Aug. 14, 2014, 1185:24-1186:23 (Moss).

Congressional District 34 in C193 is naturally-occurring minority opportunity district that captures high growth communities of interest in the DFW region. It is a coalition district and would enable minority voters to elect their candidate of choice in the southern parts of Dallas and Tarrant County. While this district was a majority minority district in 2011 (32.4% BCVAP, 15.8% HCVAP, 4.2% Asian CVAP, and 46.0% Anglo—Ex. 2011 Joint Maps J-25, Red-100, Red-106), Mr. Fairfax's analysis, presented in the 2014 trial, indicates that the district's minority population has grown in the ensuing years. According to Mr. Fairfax's testimony, Congressional District 34 in C193 would, as of 2014, be 37.07% BCVAP and 19.49% HCVAP, for a combined black and Latino CVAP of 56.56%. Tr., August 13, 2014, 804:25-805:8 (Fairfax).

Tarrant County experienced explosive population growth over the last decade, the overwhelming majority of which was minority population growth. Fort Worth was the fastest

growing city in the entire country, and grew by approximately 250,000 people over the last decade. Tr., Aug. 14, 2014, 1173:23-1174:2 (Moss). Dallas County also saw significant minority population growth. From 2000 to 2010, the minority population of Dallas grew by 350,000, and the Anglo population decreased by almost 200,000. Tr., July 17, 2014, 1423:2-9 (Korbel). Areas in these counties where the greatest minority population growth occurred were divided amongst several districts, with heavy minority populations being carved out and added to already existing minority districts or stranded in rural-dominated districts. Tr., Aug. 14, 2014, 1181:1-1184:8 (Moss).

In addition, minority voters in Dallas and Tarrant Counties have a demonstrated ability to work in coalition to elect their candidates of choice. In addition to the lay testimony presented in the 2011 trial (*see* NAACP 2011 Post-Trial Brief at 21-29, 32-33, Testimony of Congressperson Eddie Bernice Johnson, Charlie Chen), Dr. Juanita Wallace and Raul Magdaleno both testified to the incredible record of political cohesion between black and Latino voters in Dallas County. African American and Latino voters worked together to elect Elba Garcia to the Dallas County Commission. Tr., July 15, 2014, 568:1-569:10. Dr. Wallace, an African-American, and Bea Martinez, a Latina, coordinated their campaigns for the Dallas school board so that they could maximize support for both candidates from the African American and Latino community, and they held many joint events together. *Id*. at 566:1-567:14.

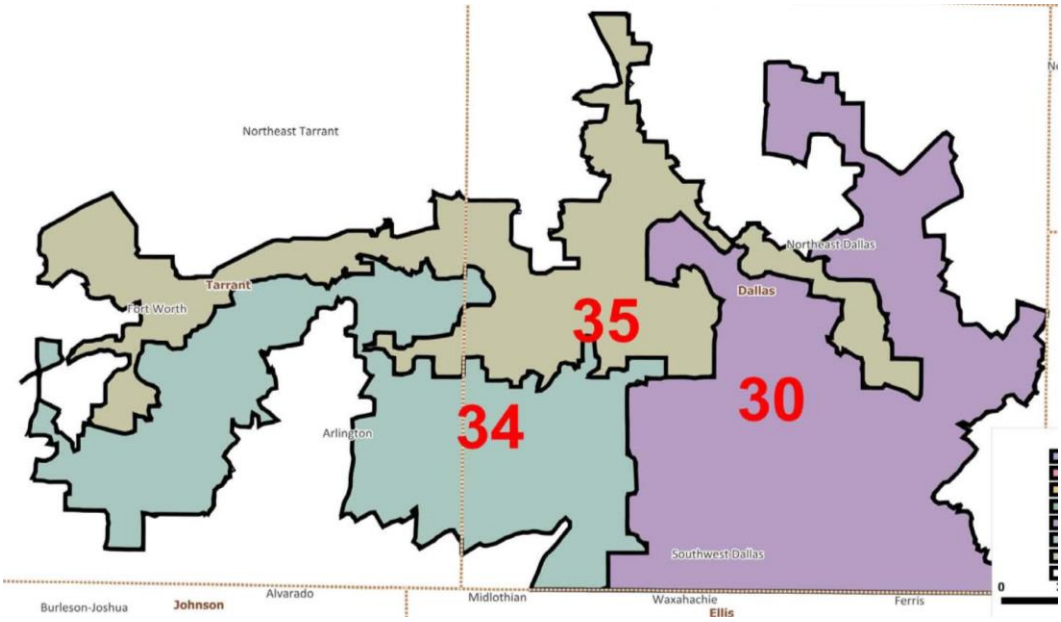
Likewise, testimony indicated that for black and brown voters to achieve any success in Tarrant County, it was absolutely necessary that they work together cohesively. This Court heard testimony from Franklin Moss, who was repeatedly elected to Fort Worth City Council from an African-American and Latino coalition district. Tr., Aug. 14, 2014, 1175:12-1176:20 (Moss). Mr. Moss testified that is would be incredibly difficult for a black or Latino candidate to

win elected office in Tarrant County without the coalition support of both groups, and that coalition has enabled the election of minority members of the school board, city council and state Senate from Tarrant County. Tr., Aug. 14, 2014, 1175:12-1176:8 (Moss);

African-American and Latino voters in Dallas and Tarrant Counties face many of the same hurdles in day to day life. These communities suffer from lack of access to health care, lack of fair educational opportunities and persistent economic disparities. Tr., July 17, 2014, 1134:1-1135:5 (Magdaleno). Schools in Dallas County are still highly segregated, with black and Latinos being concentrated in some schools, and Anglos in others. Tr., July 15, 2014, 572:2-9 (Wallace). Indeed, the testimony before the court includes evidence of a consistent lack of political responsiveness from Anglo elected officials to minority requests for assistance such that minority constituents of the Anglo elected officials had to seek the assistance of the minority elected officials in Dallas County. Dr. Wallace also testified to the consistent opposition of the Anglo voters to candidates of choice of the minority community in Dallas County. Notably, when African-American Councilman Frank Moss of Fort Worth approached Congresswoman Granger, who represents Tarrant County, for assistance, he was rejected and told he should go and see Congresswoman Eddie Bernice Johnson. Tr. 1184:24-1186:23, August 14, 2014 (Moss). All of these factors, and others cited in the NAACP's 2011 Post-Trial Brief, demonstrate that black and Latino voters are cohesive and that the totality of circumstances warrants a Section 2 remedy in Dallas County.

Finally, CD 34 is a compact district, well within the norms of the compactness of the enacted districts. CD 34 encompasses a community of interest—the growing African American population along the I-20 corridor. Tr., Aug. 14, 2014, 1185:5-23 (Moss). While it is true that

CD 34 is a coalition district, it is also quite comparable to CD 33 in the interim plan constructed by this Court—a district that recognizes a naturally-occurring minority population in the region.



G. Congressional District 35 in C193

The NAACP's plan C193 also created an additional Latino opportunity district in Dallas and Tarrant Counties. Even though this district was majority minority and near majority Latino citizen voting age population in 2011 (15.0% BCVAP and 44.6% HCVAP, 2011 Ex. Joint Maps J-25, Red-100, Red-106), Mr. Fairfax's unrebutted testimony once again demonstrates that the population gains seen from 2000 to 2010 have continued through 2014. As of 2014, Congressional District 35 is now 51.92% HCVAP. Tr., Aug. 13, 2014, 805:17-25 (Fairfax). Thus, the NAACP has now demonstrated that it *is* possible to draw an additional Latino opportunity district in the DFW region that is above 50% HCVAP. As seen above, CD 35 is a reasonably compact district that encompasses a compact minority population. It is only in two counties, and all within one urban region. For all the reasons described above and in previous briefing, Section 2 of the Voting Rights Act mandates a remedy district for Latino voters in this region of the state.

H. Congressional District 25[1]

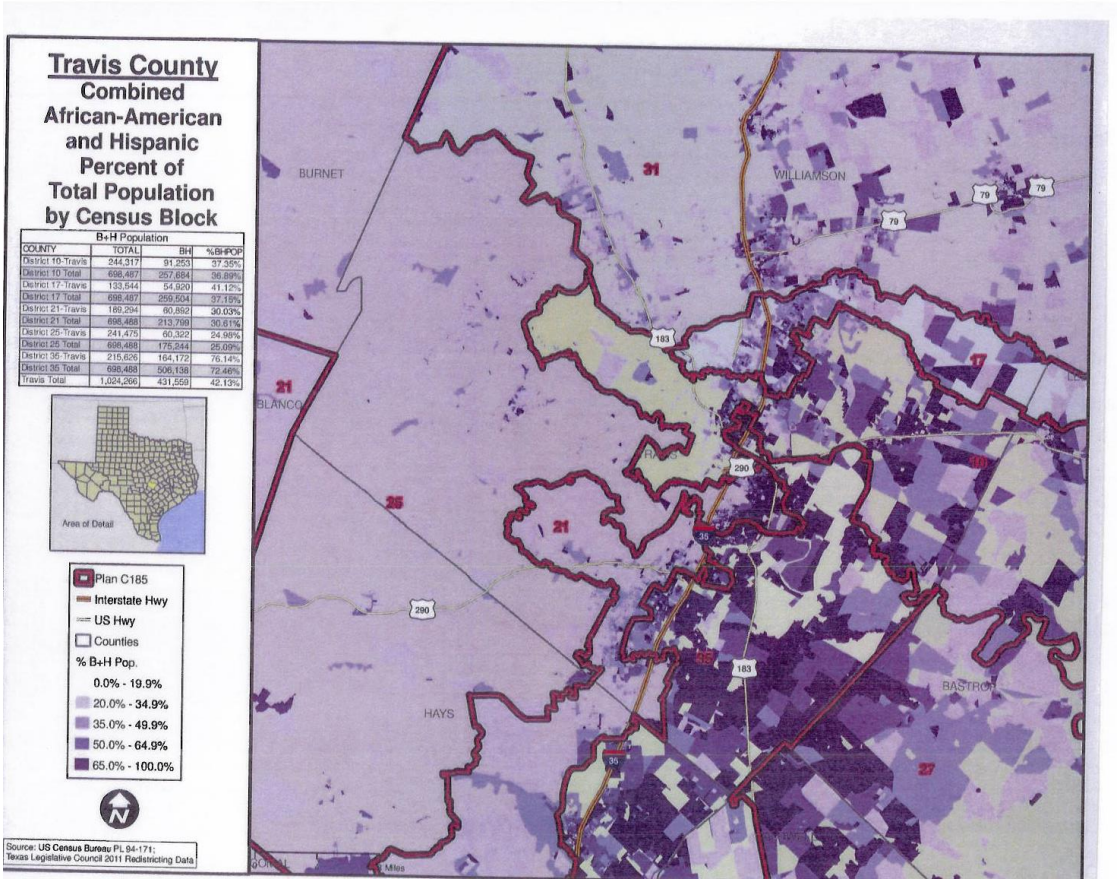
Defendants admit to destroying Congressional District 25 in Travis County, despite knowing that it was a district in which a diverse group of minority voters elected the candidate of their choice, Lloyd Doggett. Tr., Aug. 15, 2014, 1705:23-25; 1785:4-11 (Downton). This callous disregard for proven voting rights gains from an extent cohesive minority population is certainly evidence of an intent to discriminate, but even if motivated by mistake rather than by animus, this reasoning cannot save Defendants from liability under the effects prohibition of Section 2.

Prior to the enactment of C185, CD 25 was a compact, naturally-occurring and tri-ethnic crossover district whose voters had a proven track record of being politically cohesive and electing their candidate of choice. Tr., Aug. 13, 2014, 827:21-828:5 (Rodriguez). CD25 under Plan C100 was a district in which African-Americans and Hispanics had the ability to elect their candidate of choice. Tr. 990:4-992:4, August 13, 2014 (Ansolabehere); Ex. Rodriguez Plaintiffs EX-913, p. 4-5.

Under C185, Travis County's minority population has been split from two (2) districts into five (5) districts diminishing the influence of minority communities and splitting away significant institutions such as historically black high schools that are meaningful to the community being split from their attendance zones. Tr. 1027:16-1030:25, August 13, 2014. (Travillion). Under C185, poor African American enclaves east of IH-35 have been split from each other and their traditional district and put into districts with West Austin or West Travis County, which is predominantly Anglo and affluent, resulting in little interaction and coordination between the communities and their being unable to solve problems together. Tr. 1031:1-1032:12, August 13, 2014 (Travillion). In C185, all of the congressional districts that

[1] Joint Plaintiffs adopt Section III.B. of the Rodriguez Plaintiffs' brief with respect to CD 25.

divide Travis County tend to follow the borders of where the higher densities of minorities are and divide up the minority population in certain blocks, thus making race a stronger predictor of where the lines fall than party. Tr. 944:21-950:20, August 13, 2014 (Ansolabehere); Ex. Rodriguez Plaintiffs EX-912 p.33, 54; Ex. Rodriguez Plaintiffs EX-923 The destruction of this district (pictured below) was incredibly harmful to minority voters in this county, and must be remedied.



Quesada Ex. 372.

With respect to continuing racially disparate conditions, Austin is still a very segregated city. Tr. 1019:4-16, August 13, 2014 (Travillion). Austin's overall unemployment numbers are under five (5) percent but for minority communities exceeds twenty (20) percent. Access to affordable housing in Austin is limited for minority communities and holding on to property

across generations is difficult too in terms of affordability for minority communities. Tr. 1019:17-25, Tr. 715:3-6, August 13, 2014 (Travillion). And disparities in access to public institutions still exist in the City of Austin. Tr. 1019:17-25, Tr. 715:3-6, August 13, 2014. (Travillion).

Having responsive representation in Travis County is critically important to continuing the county's path of progress. The effect wrought by C185 on minority voters in Austin is clear. The NAACP Civil Rights Federal Legislative Report Card shows that the Republican congresspersons who now represent the various split minority communities have received grades of "F" for 2009, 2010, 2011. Tr.1035:11-1036:22, August 13, 2014 (Travillion). Plan C193, like many other demonstrative plans offered in this litigation, restores CD 25, drawing it as a district that was, as of 2011, 14.6% BCVAP, 29.1% HCVAP and 51.6% Anglo CVAP. Ex. 2011 Joint Maps J-25, Red-100, Red-106.

I. Additional Senate Factor Evidence

Dr. Vernon Burton's expert report for the NAACP clearly establishes both the history of discrimination in voting against African-Americans and voting but also the continuation of discrimination in voting and the lack of responsiveness of public officials and the continuing existence of societal discrimination against African-Americans and Latinos.

In addition to the Senate Factors meticulously detailed in Dr. Burton's 2011 report (and the NAACP 2011 Trial Brief, p. 35-43, and in addition to the Senate Factor evidence discussed in each district section above, this Court also heard lay witness testimony that buttresses the conclusion that the totality of circumstances warrant a Voting Rights Act remedy. For instance, black voters in Texas have suffered repeated incidents of voter intimidation in the last decade. Tr., Sept. 12, 2011, 1384:3-1385:24 (Jefferson) (detailing NAACP hearings on voter

intimidation). And black voters are constantly faced with a lack of responsiveness from elected officials who are not elected from minority opportunity districts. After every congressional session, the NAACP publishes a report card detailing how congressional representatives vote on issues that are important to the NAACP. Based on all of those votes, congresspersons are given a grade. With the one exception of Congressional District 25 in C100, districts that are majority Anglo elect representatives that score very poorly on this measure of responsiveness. Tr., Sept. 12, 2011, 1386:13-1390:5 (Jefferson).

Finally, statewide, voters of color find their children being suffering the lasting negative effects of unfair school policies. Children of color are subject to inappropriate and excessive school discipline, as compared to white students. Children of color are more likely to end up in special needs classes, even where such action is not necessary. The end result is that these children become adults who face additional challenges in political participation. Tr., Sept. 12, 2011, 1393:10-1394:14 (Jefferson).

When examining what the state of Texas did with its 2011 redistricting plan in the context of this historical and ongoing discrimination, and disparate treatment, the unescapable conclusion is that a remedy is necessary to preserve the opportunity of all voters in this state to participate in the political process.

CONCLUSION

For all of the foregoing reasons, and those enumerated in the NAACP's 2011 Post-Trial Brief, the NAACP Plaintiffs respectfully submit to the Court that the 2011 congressional redistricting plan (C185) violates both the Fourteenth Amendment and Section 2 of the Voting Rights Act.

Dated this, the 30th of October, 2014.

Respectfully submitted,

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